

RD AN No. 3628 (1965-B)  
March 28, 2001

TO: State Directors  
Rural Development

ATTENTION: Multi-Family Housing Program Directors/Managers

FROM: James C. Alsop (Signed by James C. Alsop)  
Acting Administrator  
Rural Housing Service

SUBJECT: Transfer and Assumption of Multi-Family Housing Loans

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to provide further guidance in the assumption and transfer of Multi-Family Housing (MFH) loans. Additionally, this AN provides that the Agency is willing to consider waiving certain parts of the regulation to allow for equity at the time of a program transfer.

**COMPARISON WITH PREVIOUS AN:**

This AN supersedes AN No. 3492 (1965-B) dated November 8, 1999.

**IMPLEMENTATION RESPONSIBILITIES:**

State Directors and housing staff should familiarize themselves with transfer and assumption authorities covered by RD Instruction 1965-B and the guidance outlined in this AN.

I. **Objective.**

In order to better serve tenants and retain high quality MFH sponsors, stimulate rehabilitation of older projects, and extend the useful life of and protect the Government's security, existing transfer policies should be utilized to allow for borrower restructuring in order to obtain financial incentives, such as tax credits, available to the low-income housing industry. However, loan restructuring should only be used for those projects where the owner entity is in compliance and has met their responsibilities as required by all loan instruments.

II. **Transfer and Assumption Policies.**

Section 1965.65 of RD Instruction 1965-B describes the policies for approving transfers of real estate security and the assumption of loans. The requirements of this section allow borrowers to

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FILING INSTRUCTIONS:  
Preceding RD  
Instruction 1965-B

transfer their project to another separate and distinct entity in which members are participants in both the transferring and the assuming entities. The transferee must be legally organized and meet the requirements of RD Instructions 1965-B and 1944-E and the guidance of this AN. Caution should be used in distinguishing a transfer from a change in membership. Changes involving 100 percent membership changes or changes in the name of an entity must be treated as a transfer and processed in accordance with section 1965.65.

### III. **Evaluation of Applicants and Eligibility Determination.**

The approving official will evaluate the eligibility of the transferee (applicant) in accordance with the provisions of RD Instructions 1944-E, 1965-B and the following:

- A. The Servicing Office staff, State Architect and Civil Rights Coordinator will make an on-site inspection of each unit in the project being transferred to document any issues in non-compliance with loan obligations. A compliance review will also be conducted at that same time provided one has not been completed in the past 12 months. Pictures of any deficiencies will be made part of the applicant's file.
- B. The transferee (applicant) and members of the transferee must be in compliance, or have been complying with an approved workout plan, for a minimum of 6 months on all other projects owned by members of the assuming entity to be considered eligible for additional Rural Development assistance. The State Director may waive this requirement for borrowers who are in noncompliance through circumstances beyond their control.
- C. Outstanding environmental concerns must be identified and corrective action taken to mitigate these conditions. Any project where environmental concerns have been identified will not be approved for transfer without review by the National Office. The transfer file must include an environmental review by the State Environmental Coordinator. Examples of concerns include, but are not limited to:
  - 1. Water supply problems.
  - 2. Pesticide application by aerial and ground spraying;
  - 3. Sewage disposal problems (leakage onto ground, into creeks, river, etc.).
- D. Any audits or investigations conducted by the Office of Inspector General (OIG) must be closed or disposed of to the satisfaction of OIG.
- E. Identity of Interest transfers will not be approved before the State Director can certify that all of the following conditions exist:
  - 1. The account is current.
  - 2. The reserve account is on schedule, less any authorized withdrawals.
  - 3. The taxes and insurance account is on schedule and all outstanding bills have been paid.
  - 4. The security deposit account is fully funded.
  - 5. All maintenance items outstanding have been completed.
  - 6. Management is satisfactory and there is an approved Management Plan and Management Agreement, if applicable.

7. The borrower is in compliance with Equal Opportunity, Fair Housing and RD Instruction 1930-C requirements.

IV. **Tax Credits for any Transfer.**

- A. Where tax credit incentives are being provided to the transferee, the transferee's legal counsel must provide an opinion stating that the transaction complies with Internal Revenue Service (IRS) regulations concerning low-income housing tax credits, or where applicable, obtain a ruling from the IRS pursuant to the procedures outlined in Rev. Proc. 93-1, 1933-1 I.R.B.10.
- B. The amount of indebtedness to be assumed will be based on an appraisal that meets Uniform Standards of Professional Appraisal Practices, and reflects the current fair market value. In no instance will appraisals be inflated to defer loan losses and write-offs, avoid adverse tax consequences, or support a higher tax credit basis.

V. **Structuring a Transfer Agreement.**

- A. Form RD 465-5, "Transfer of Real Estate Security," will be used to record the agreements between the transferor and transferee with an addendum if necessary,
- B. The agreement will be prepared to show all transactions involved relating to equity including disposition of syndication proceeds between the transferee and transferor, method and source of payment, payment of recoverable costs items, disposition of future paid payments, assignment of project accounts and leases, disposition of any equipment purchased with loan or project funds.
- C. The agreement must document any necessary actions to bring the project into compliance with regulations and loan instruments, such as delinquent payments, underfunded reserves, and deferred maintenance. If there are health and safety deficiencies identified, an action plan for immediate steps to take corrective measures must be included. These agreements must state which party will be responsible and the source of funds. Additional information may be attached to Form RD 465-5 as needed to ensure that all agreements are documented.

VI. **Payment of Equity.**

- A. No compensation, equity or syndication proceeds will be paid to the transferor by the transferee in connection with any transfers unless all the following conditions are met:
  1. The account is current.
  2. The reserve account is on schedule, less any authorized withdrawals.
  3. The taxes and insurance account is funded and all outstanding bills paid.
  4. The security deposit account is current.
  5. There are no outstanding serious maintenance items uncompleted or an approved plan of action is in place.
  6. Management is satisfactory and there is an approved management plan and management agreement, if applicable.

7. Project has been operated in compliance with Equal Opportunity and Fair Housing requirements, and no project funds have been misappropriated.
- B. When all of the conditions in section 1965.65(b)(3)(vi)(A) cannot be met, the State Director may request the National Office to authorize an equity payment only when all other alternatives, including liquidation, would not be in the best interest of the Government and tenants. Requests for an Administrator's exception must be in accordance with section 1965.97 of RD Instruction 1965-B. The loan files, including the transfer application file, must be submitted to the Multi-Family Housing Portfolio Management Division with any request for exception authority.
  - C. To facilitate the preservation of existing MFH projects, the Agency is willing to consider waiving sections 1965.65(b)(3)(vi) and (c) (5) of RD Instruction 1965-B to allow for an equity payment to the transferor at the time of a transfer. When considering a waiver the following conditions must be met:
    1. The appraisal for the equity determination will be at an "as is" unsubsidized value.
    2. The Office of Rental Housing Preservation (ORHP) must approve the equity payment using the process established on the incentive calculation worksheet. Project rents will not exceed comparable conventional rents.
    3. The loan may be up to 100 percent of equity for nonprofit entities that agree to restrictive-use provisions for the remaining useful life of the project or limited partnerships that agree to 30 years restrictive-use provisions.
    4. If a subsequent loan is completed as part of the transaction, an appraised value using subsidy and an "as improved" value may be used if appropriate.

**VII. Rehabilitation in Connection with the Transfer.**

- A. All necessary repairs to assure that the housing will be decent, safe and sanitary, and other improvements proposed by the applicant to enhance long-term viability of the housing must be identified and agreed to by Rural Development as part of the approval of the transfer.
- B. The transferee must provide a plan for any repairs or enhancements as part of the application package. The plan must identify each repair or enhancement item, the timeframe for completion, estimate of costs for each item, who will do the work, and any Identity of Interest between the transferee and the party doing the work or providing materials and services. RD must concur with the plan as part of the approval of the transfer.
- C. Priority sources for repairs or enhancements:
  1. Transferor's equity payment, including any syndication proceeds the transferee pays to the transferor.
  2. Contributions by the transferee.
  3. Reserve account funds being transferred (provided the amount remaining will be adequate to meet the maintenance and expenses in the immediate or near future).

4. Loan funds, if available.
  - a. Loan funds will be used only as a last resort and only to the extent needed for essential repairs.
  - b. When use of the above items has been exhausted, an RD subsequent loan may be made for capital improvements and enhancements (e.g., handicapped accessibility, security measures, etc.).
- D. Exhibit K to RD Instruction 1924-A may be used as a guide in determining what Rural Development considers maintenance and rehabilitation of MFH project. This is a guide; flexibility should be used to protect the Government's interest to enhance the long-term livability of the housing and handicapped accessibility.
- E. A plan must be developed to address how tenants will be relocated if necessary to rehabilitate the project.

The attachment is being provided as a checklist to assist servicing officials in processing transfers and certifying to actions that are applicable to certain transactions. The provisions of section 1965.65 of RD Instruction 1965-B must be followed at all times in processing transfers.

All transfers that are in process and not yet closed must be reviewed for compliance with this AN. Any transfer that is not in compliance or cannot be processed in compliance with this AN will not be processed further without guidance from the National Office.

If you have a question concerning this matter, please contact Edith Brown of the Multi-Family Housing Portfolio Management Division at (202) 720-3187.

Attachment

## RURAL RENTAL HOUSING TRANSFER CHECKLIST

1. Name of Transferee (Applicant): \_\_\_\_\_
2. Transferee's Tax ID or Social Security No.: \_\_\_\_\_
3. Name of Transferee's Attorney: \_\_\_\_\_
4. Name of Transferor: \_\_\_\_\_
5. Transferor's Borrower ID No. \_\_\_\_\_ Project No. \_\_\_\_\_
6. Name and Address of Project \_\_\_\_\_  
\_\_\_\_\_
7. Type of Transfer: Same Terms [ ] New Terms [ ]
8. Does applicant meet eligibility requirements? Yes [ ] No [ ]
9. Is this an Identity of Interest transfer? Yes [ ] No [ ]
10. The approval official must certify that the following items have been completed, where applicable. Check off items that can be certified to:
  - [ ] On-site inspection and compliance review have been completed.  
(Reports must be made a part of the transfer file.)
  - [ ] Environmental concerns have been identified and corrective action has been taken to mitigate the conditions.
  - [ ] Sources and uses comprehensive Evaluation (SAUCE) has been conducted and the necessary minimum assistance is being provided to this transaction.

**For Existing Borrowers who are Applicants:**

- ☐ There are no unclosed audit findings or investigations against the borrower or related entities.
- ☐ Where applicable, the borrower and members of the borrower are in compliance on all other projects or complying with an approved workout plan for a minimum of 6 months.

**For Identity of Interest Transfers:**

- ☐ The loan account is current.
- ☐ The reserve account is on schedule, less authorized withdrawals.
- ☐ The taxes and insurance account is on schedule and all outstanding bills paid.
- ☐ The security deposit account is fully funded.
- ☐ There are no outstanding maintenance items.
- ☐ Management is satisfactory and meets the requirements of section III, E, and items 6 & 7 of this AN.

11. Summary of development to be completed and estimated cost:

12. Source of funds for development work:

Funds in existing supervised bank account:	<input type="checkbox"/>	\$ _____
Contributions by the Transferor:	<input type="checkbox"/>	\$ _____
Contributions by the Transferee:	<input type="checkbox"/>	\$ _____
Reserve account being transferred:	<input type="checkbox"/>	\$ _____
Rural Development loan funds:	<input type="checkbox"/>	\$ _____
Other (describe):	<input type="checkbox"/>	\$ _____

(See Development Plan or Estimate of Costs)

13. Consideration for conveyance of the security: Amounts are approximate.

Assume RD Debt:	\$ _____
Assume Indebtedness to:	\$ _____
Assume Indebtedness to:	\$ _____
Pay the Transferor as Equity:	\$ _____

Equity will be paid: In Cash ☐  
Payments ☐

If equity is to be paid via payments, specify source of funds for payments \_\_\_\_\_.

Total Consideration: \$ \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

DATE: \_\_\_\_\_